Eight Mile Style, LLC et al v. Apple Computer, Incorporated Doc. 116

**UNITED STATES DISTRICT COURT**
**IN THE EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**EIGHT MILE STYLE, LLC, and MARTIN AFFILIATED, LLC,**

**Plaintiffs,**

**vs.**

**APPLE COMPUTER, INC. and AFTERMATH RECORDS d/b/a AFTERMATH ENTERTAINMENT**

**Defendant.**

**Case No. 2:07-cv-13164**
**Hon. Anna Diggs Taylor**
**Magistrate Judge Donald A. Scheer**

Howard Hertz, Esq. (P26653)
Jay G. Yasso, Esq. (P45484)
Hertz Schram PC
1760 S. Telegraph Rd., Suite 300
Bloomfield Hills, MI 48302
(248) 335-5000
hhertz@hertzschram.com
jyasso@hertzschram.com
Attorneys for Plaintiffs

Richard S. Busch (TN BPR#14594)
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com
Attorneys for Plaintiffs

**PLAINTIFFS EIGHT MILE STYLE, LLC AND MARTIN AFFILIATED, LLC'S NOTICE OF FILING OF SUPPLEMENTAL EVIDENCE**

Plaintiffs Eight Mile Style, LLC ("Eight Mile") and Martin Affiliated, LLC ("Martin") (collectively "Plaintiffs") hereby submit this Notice of Filing of Supplemental Evidence in support of their Memorandum in Opposition to Defendants' Motion for Summary Judgment.

1. Defendants Apple, Inc. and Aftermath Records d/b/a Aftermath Entertainment filed their Revised Motion for Summary Judgment on July 28, 2008. (Doc. No. 66.) Plaintiffs filed their Memorandum in Opposition to Defendants' Motion for Summary Judgment on August 28, 2008. (Doc. No. 74.) Defendants filed their Reply brief on October 15, 2008. (Doc. No. 94.)

Dockets.Justia.com

2. On August 12, 2008, plaintiffs served defendants with their Rule 26(a)(2) expert disclosures. Defendants served rebuttal disclosures pursuant to Rule 26(a)(2) on September 11, 2008.

3. Defendants identified Peter Paterno in their expert disclosures as an individual who would offer expert testimony regarding controlled composition clauses in artist recording agreements, and as the individual who would offer evidence to contradict or rebut evidence offered by plaintiffs' expert witnesses.

4. Plaintiffs requested that Mr. Paterno be made available for deposition, and Mr. Paterno was finally deposed on Thursday, November 20, 2008.

5. Attached hereto as **Exhibit 1** is a short excerpt of the transcript of Mr. Paterno's deposition, pages 79:4-80:14 of which, concerning defendants' practice of sending "license request letters" to publishers when controlled composition language is ambiguous, are relevant to plaintiffs' Opposition to defendants' Motion for Summary Judgment.

6. Plaintiffs respectfully request that the Court take notice of their citation to this supplemental authority.

DATED: December 3, 2008

/s/ Richard S. Busch
Richard S. Busch
(TN Bar No. 014594)
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com

/s/ Howard Hertz
Howard Hertz, Esq. (P26653)
Jay G. Yasso, Esq. (P45484)

Hertz Schram PC
1760 S. Telegraph Rd., Suite 300
Bloomfield Hills, MS 48302
(t): (248) 335-5000
(e): hhertz@hertzschram.com
(e): jyasso@hertzschram.com

Attorneys for Plaintiffs